

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

THE LAMOTTE CHEMICAL PRODUCTS COMPANY, and DOES 1-100

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
CONSUMER ADVOCACY GROUP, INC., in the public interest

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

080-08-476010
(Número del Caso)

COPY

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California for the County of San Francisco
Civic Center Courthouse
400 McAllister Street, San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Daniel Cho, Yeroushalmi & Associates, 3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010, 213-382-3183

O. STEPPE

Deputy
(Adjunto)

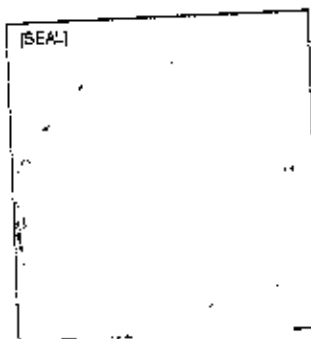
DATE: JUN 05 2006
(Fecha)

GORDON PARK II Clerk by (Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
 - under: CCP 416.10 (corporation) CCP 416.60 (minor)
 - CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 - CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 - other (specify):
- by personal delivery on (date):



ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2008 JUN -5 AM 10:23

GORDON PARR - LI. CLERK

BY: D. STEPPE
DEPUTY CLERK

CASE MANAGEMENT CONFERENCE SET

NOV 07 2008 -9:00 AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO --UNLIMITED

CGC-88-476010

12	CONSUMER ADVOCACY GROUP, INC.,)	CASE NO.
13	in the public interest,)	
14	Plaintiff,)	COMPLAINT FOR PENALTY,
15)	INJUNCTION, AND RESTITUTION
16	v.)	Violation of Proposition 65, the Safe
17	THE LAMOTTE CHEMICAL PRODUCTS)	Drinking Water and Toxic Enforcement
18	COMPANY, and DOES 1-100;)	Act of 1986 (Health & Saf. Code., §§
19	Defendants.)	25249.5, et seq.)
20)	ACTION IS AN UNLIMITED CIVIL
21)	CASE (exceeds \$25,000)
22)	
23)	

24 COMES NOW plaintiff, Consumer Advocacy Group, Inc., who, for a cause of action,
25 alleges as follows.
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copy

BACKGROUND AND PRELIMINARY FACTS

- 1
2 1. In 1986, California voters approved an initiative to address growing concerns about
3 exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic
4 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5 et seq.
5 ("Proposition 65"), helps to protect California's drinking water sources from
6 contamination, to allow consumers to make informed choices about the products they
7 buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
- 8
9 2. Proposition 65 requires the Governor of California to publish a list of chemicals known to
10 the state to cause cancer, birth defects, or other reproductive harm. Health & Saf. Code,
11 § 25249.8. The list, which the Governor updates at least once a year, contains over 550
12 chemicals. Proposition 65 imposes warning requirements and other controls that apply to
13 Proposition 65 listed chemicals.
14
- 15 3. All businesses with ten or more employees that operate or sell products in California
16 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
17 from knowingly discharging Proposition 65 listed chemicals into sources of drinking
18 water (Health & Saf. Code, § 25249.5), and (2) required to provide "clear and
19 reasonable" warnings before exposing a person, knowingly and intentionally, to a
20 Proposition 65 listed chemical (Health & Saf. Code, § 25249.6.)
21
- 22 4. Plaintiff, Consumer Advocacy Group, Inc. ("CAG" or "Plaintiff"), is a non-profit
23 California corporation. It brings this action in the public interest as defined under Health
24 and Safety Code section 25249.7, subdivision (d).
25
- 26 5. Defendant, The Lamotte Chemical Products Company is a corporation based in
27 Maryland.
28

1 6. Plaintiff is informed, believes, and thereon alleges that The Lamotte Chemical Products
2 Company at all times mentioned here has conducted business within the State of
3 California.

4
5 7. At all times mentioned here, "Defendants" include The Lamotte Chemical Products
6 Company and Does 1-100.

7 8. Plaintiff is ignorant of the true names and capacities of defendants Does 1-100, and
8 therefore sues these defendants by such fictitious names. Plaintiff will amend this
9 complaint to allege their true names and capacities when ascertained. Plaintiff is
10 informed, believes, and thereon alleges that each fictitiously named defendant is
11 responsible in some manner for the occurrences herein alleged and the damages caused
12 thereby.

13
14 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each
15 defendant was a person doing business within the meaning of Health and Safety Code
16 section 25249.11, subdivision (a), and that each defendant has had 10 or more employees.

17
18 10. Plaintiff conducted research, from which it identified a widespread practice of
19 manufacturers and distributors of water testing products of exposing, knowingly and
20 intentionally, persons in California to the Proposition 65 listed constituents of such
21 products without first providing clear and reasonable warnings of such to the exposed
22 persons prior to exposure. Plaintiff later discerned that Defendants engaged in such
23 practice.
24

25 //

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27 //

1 **JURISDICTION**

2 11. The Court has jurisdiction over this lawsuit pursuant California Constitution Article VI
3 Section 10, which grants the Superior Court original jurisdiction in all causes except
4 those given by statute to other trial courts.
5

6 **FIRST CAUSE OF ACTION**

7 **(BY Consumer Advocacy Group, Inc. and against The Lamotte Chemical Products**
8 **Company and Does 1-100 For Violation Of Proposition 65, The Safe Drinking Water And**
9 **Toxic Enforcement Act Of 1986 (Health & Saf. Code, §§ 25249.5, et seq.)**
10

11 12. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference the
12 previous paragraphs of this complaint as though fully set forth herein.
13

14 **LaMOTTE Phenolphthalein**

15 13. Each Defendant is and at all times mentioned here was a manufacturer or distributor of
16 LaMOTTE Phenolphthalein Indicator Solution, 1% , Reagent Code 2246-H ("LaMOTTE
17 Phenolphthalein"), a consumer product designed for testing of waters, including
18 industrial waters and in educational settings, for the presence of alkalinity. LaMOTTE
19 Phenolphthalein contains Phenolphthalein. On May 15, 1998, the Governor of California
20 added Phenolphthalein to the list of chemicals known to the State to cause cancer (Cal.
21 Code Regs., title 22, § 12000, subd. (b)). Pursuant to Health and Safety Code sections
22 25249.9 and 25249.10, twenty months after addition of Phenolphthalein to the list of
23 chemicals known to the State to cause cancer, Phenolphthalein became subject fully to
24 Proposition 65 warning requirements and discharge prohibitions.
25

26
27 14. Plaintiff is informed, believes, and thereon alleges that between February 8, 2005 and the
28 present each defendant knowingly and intentionally exposed California users of

1 LaMOTTE Phenolphthalein, which it manufactured or distributed, as mentioned above,
2 to Phenolphthalein, without first giving clear and reasonable warning of such to the
3 exposed persons before the time of exposure. Defendants have caused distribution of
4 LaMOTTE Phenolphthalein in California. Defendants thereby violated Proposition 65.
5 Defendants' violations of Proposition 65 as to LaMOTTE Phenolphthalein have been
6 ongoing and continuous and have continued to the date of the signing of this complaint.
7

- 8 15. The principal route of exposure was through inhalation, ingestion, and dermal contact
9 when users of LaMOTTE Phenolphthalein allow the product to spill so that it encounters
10 their skin or thereafter results in hand-to-mouth or hand-to-mucous membrane contact, or
11 they breathe in fumes from the product thereby suffering exposure to Phenolphthalein.
12

13 **LaMOTTE Thorium Nitrate Solution**

- 14 16. Each Defendant is and at all times mentioned here was a manufacturer or distributor of
15 LaMOTTE Thorium Nitrate Solution, product code 6158WT-H ("LaMOTTE Thorium
16 Nitrate Solution"), a consumer product designed for testing of waters, including industrial
17 waters, for the presence of phosphonate and for phosphonate analysis in educational
18 settings. LaMOTTE Thorium Nitrate Solution contains Radionuclides. On July 1, 1989,
19 the Governor of California added Radionuclides to the list of chemicals known to the
20 State to cause cancer. Twenty months after addition of Radionuclides to the list of
21 chemicals known to the State to cause cancer, Radionuclides became subject fully to
22 Proposition 65 warning requirements and discharge prohibitions.
23

- 24 17. Plaintiff is informed, believes, and thereon alleges that between June 28, 2004 and the
25 present each defendant knowingly and intentionally exposed California users of
26 LaMOTTE Thorium Nitrate Solution, which it manufactured or distributed, as mentioned
27
28

1 above, to Radionuclides, without first giving clear and reasonable warning of such to the
2 exposed persons before the time of exposure. Defendants have caused distribution of
3 LaMOTTE Thorium Nitrate Solution in California. Defendants thereby violated
4 Proposition 65. Defendants' violations of Proposition 65 as to LaMOTTE Thorium
5 Nitrate Solution have been ongoing and continuous and have continued to the date of the
6 signing of this complaint.
7

8 18. The principal route of exposure was through inhalation, ingestion, and dermal contact
9 when users of LaMOTTE Thorium Nitrate Solution allow the product to spill so that it
10 encounters their skin or thereafter results in hand-to-mouth or hand-to-mucous membrane
11 contact, or they breathe in fumes from the product thereby suffering exposure to
12 Radionuclides.
13

14 SATISFACTION OF PRIOR NOTICE

15 19. On or about February 8, 2008, Plaintiff gave notice of alleged violations of Health and
16 Safety Code section 25249.6 subject to a private action to The Lamotte Chemical
17 Products Company, identified in the notice as Lamotte Company, and to the California
18 Attorney General, County District Attorneys, and City Attorneys for each city containing
19 a population of at least 750,000 people in whose jurisdictions the violations allegedly
20 occurred, concerning LaMOTTE Phenolphthalein.
21

22 20. On or about June 28, 2007, Plaintiff gave notice of alleged violations of Health and
23 Safety Code section 25249.6 subject to a private action to The Lamotte Chemical
24 Products Company, identified in the notice as Lamotte Company, and to the California
25 Attorney General, County District Attorneys, and City Attorneys for each city containing
26
27
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1 a population of at least 750,000 people in whose jurisdictions the violations allegedly
2 occurred, concerning LaMOTTE Thorium Nitrate Solution.

3
4 21. Plaintiff's notices of alleged violation included certificates of merit executed by the
5 attorney for the noticing party, Plaintiff. The certificates of merit stated that the attorney
6 for Plaintiff who executed the certificate had consulted with at least one person with
7 relevant and appropriate expertise who had reviewed data regarding the exposure to
8 Phenolphthalein and Radionuclides, respectively, which are the subject Proposition 65
9 listed chemicals of this action. Based on that information, the attorney for Plaintiff who
10 executed the certificates believed there was a reasonable and meritorious case for this
11 private action. The attorney for Plaintiff attached to the certificates of merit served on the
12 Attorney General information sufficient to establish the basis of the certificates of merit.
13

14 22. Plaintiff is commencing this action more than sixty days from the date that Plaintiff gave
15 notice of the alleged violations to The Lamotte Chemical Products Company and to the
16 public prosecutors referenced in Paragraphs 19 and 20.
17

18 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
19 any applicable district attorney or city attorney has commenced and is diligently
20 prosecuting an action against the Defendants.
21

22 24. Plaintiff's allegations concern a "consumer product exposure," which is an exposure that
23 results from a person's acquisition, purchase, storage, consumption, or other reasonably
24 foreseeable use of a consumer good. LaMOTTE Phenolphthalein and LaMOTTE
25 Thorium Nitrate Solution are consumer products.
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1 PRAYER FOR RELIEF

2 Plaintiff demands against each Defendant as follows:

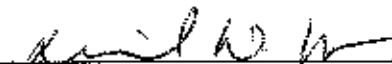
- 3 1. A permanent injunction;
- 4
- 5 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 6 3. Costs of suit;
- 7 4. Reasonable attorney fees and costs; and
- 8 5. Any further relief that the court may deem just and equitable.
- 9

10 Dated: May 21, 2008

YEROUSHALMI & ASSOCIATES

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13 

14 Daniel Cho

15 Attorney for Plaintiff,

16 Consumer Advocacy Group, Inc.

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